

NEBRASKA ADMINISTRATIVE CODE

TITLE 433

TRUTH AND DECEPTION EXAMINER'S ACT
Nebraska Secretary of State

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Chapter 1. Define Terms as used in these rules:

- 001. "Act" means 81-1901 through 81-1936 R.S., Supp. 1980
- 002. "Secretary" shall mean the Secretary of State for the State of Nebraska.
- 003. "Polygraph Examiner" shall mean any person, other than an intern who uses an approved polygraph to test or question an examinee for the purpose of attempting to determine truth or deception.
- 004. "Voice Stress Examiner" shall mean any person, other than an intern, who uses an instrument capable of permanently recording on a graph one or more psychophysiological reactions present in the voice of an examinee for the purposes of attempting to determine truth or deception.
- 005. "Examinee" shall mean the individual who is being tested, examined, or questioned by an examiner or intern for the purpose of verifying truthfulness or detecting deception.
- 006. "Examination" shall mean a procedure by which a person licensed under this act, using instrumentation prescribed by the act, administers voluntarily to a person tests using instrumentation to verify truth or detect deception, and provides an opinion as to a person's truthfulness or deceptiveness, based upon the tests administered during the examination.
- 007. "Test" shall mean that part of a truth or deception examination during which a person licensed under this act, solicits from a person, responses which will be recorded by instrumentation to measure psychophysiological responses for the purpose of attempting to determine truth or deception.

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Chapter 2. Provide Hearing Procedure

001. To provide rules of procedure for appeals from determinations by the Secretary, his appointee or designee in any case in which the legal rights, duties or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing, and where an appeal process has not otherwise been established by state law or agency administrative rule.

002. Request for Hearing Before the Secretary.

Any affected party desiring to appeal a determination of the Secretary, his appointee or designee may file a typewritten request for hearing with the Secretary of State. The request shall be on 8 1/2 x 11 inch paper.

002.01 Content.

A request for hearing shall contain the following:

- 002.01a The full name, address and telephone number of the person requesting the hearing;
- 002.01b The full name, address and telephone number, if known, of any person whose interests could be affected by the hearing officer's decision, hereafter referred to as an "interested party";
- 002.01c A plain and concise statement of the reasons why the determination of the Secretary, his appointee or designee is erroneous;
- 002.01d A certificate showing that a copy of the request for hearing has been mailed, ordinary certified or registered mail, or has been personally delivered to each person listed in subpart A.1.b.

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002.02 Place and Manner of Filing.

A request for hearing may be filed by personal delivery, ordinary mail, or registered or certified mail, addressed to:

Secretary of State
Suite 2300
State Capitol
Lincoln, Nebraska 68509

002.03 Time.

The request for hearing must be postmarked or personally delivered to the Secretary within 15 calendar days from the date of the determination which is the subject of the request for hearing. The Secretary may waive the time requirement for good cause shown. A written request for the waiver setting forth the reasons for the delinquency must accompany the request for hearing in order to be considered.

002.04 Service.

A copy of the request for hearing must be provided to each person whose interests could be affected by the hearing officer's decision. Service shall be accomplished at any time prior to the filing of the request for hearing in any manner permitted in Subpart A.1.d.

003 Advancement of the Case.

003.01 Setting of Hearing.

003.01a Time and Place.

Except as otherwise provided for by statute, the time and place of hearing will be set by the Secretary at his discretion.

003.01b Notice

The Secretary shall cause written notice to be sent to all interested parties by certified mail at least 15 calendar days prior to the hearing. The notice shall include the time and place of the hearing and set forth the issue or issues involved.

003.01c Continuances.

An interested party who desires a continuance shall, immediately upon receipt of the notice of hearing, or as soon thereafter as facts requiring additional time are known, make a request for continuance of the Secretary, stating in detail the reasons why an extension of time is necessary. For good cause shown the Secretary may grant such a continuance and may at any time order a continuance on his own motion. Only under exceptional circumstances will requests for continuance of a hearing be considered unless submitted on or before the seventh calendar day prior to the hearing date.

004 Conduct of Hearings.

004.01 Hearing Officer.

Hearings will be conducted by the Secretary or such hearing officer as the Secretary may designate. The Secretary or hearing officer will open the proceedings, administer oaths or affirmations, act on pleadings not previously filed, receive evidence, rule on motions and objections relating to testimony and evidence, interrogate any witnesses to ascertain additional facts, and close the proceedings.

004.02 Counsel.

Any party to the proceeding may be represented by an attorney at law.

004.03 Proceedings.

A party to the hearing will be allowed to:

004.03a Make an opening statement;

004.03b Present evidence;

004.03c Cross-examine witnesses;

004.03d Present rebuttal evidence; and

004.03e Make a closing statement.

004.04 Testimony and Exhibits.

The Secretary or hearing officer shall receive all evidence in accordance with the criteria set forth in S84-914 R.R.S. 1943, as amended.

004.05 Findings and Orders.

Upon completion of any hearing, the Secretary or hearing officer may take the matter under advisement and the Secretary or hearing officer shall make his decision and enter a written Order containing findings of fact and conclusions of law. The Order and accompanying findings and conclusions shall be served upon each interested party by mailing a copy, certified mail, or by personal delivery.

Disposition of the case may also be made, subject to the approval of the Secretary or hearing officer, by summary judgement, stipulation, agreed settlement, consent order or default.

005 Appeals.

Except as otherwise provided by law, any party may appeal a final order of the Secretary or hearing officer to the district court in accordance with the provisions of S84-917 R.R.S. 1943, as amended.

006 Stay Pending Hearing.

The filing of a request for hearing shall not automatically stay enforcement of an order issued by the Secretary, his appointee or designee. The Secretary or hearing officer may order a stay upon motion thereof upon such terms as are deemed appropriate. Motions for stays will generally not be granted in cases where the order being appealed from relates to the enforcement of a statute or regulation pertaining to the health or safety of employees, or the general public.

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Chapter 3. Divulging Information

001. An examiner may authorize the monitoring of an examination by, and the divulging of information concerning the examination to, a person engaged in research or education related to conducting truth and deception examinations and may also authorize the monitoring of an examination by, and the divulging of information to a person who has a substantial interest in the examination or the examinee, or both, if the examiner first obtains from such person his or her agreement to abide by the provisions of the act and the rules promulgated pursuant thereto, except that no license requirements shall apply to the monitor.
002. A person who monitors an examination shall not disclose to any person, except the person requesting the examination, any information divulged by the examinee during a truth and deception examination without first obtaining specific written consent from the examinee, unless otherwise required to do so by law.

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Chapter 4. Written consent for disclosure

001. An examiner, his or her agents, or other person shall not divulge any information revealed by an examinee during an examination in explaining or responding to control questions introduced for diagnostic comparison purposes without first obtaining the written consent of the examinee, except where such information specifically concerns the objectives of the examination stated and agreed to in advance by the examinee and subject to the provisions of the act and the promulgated rules issued pursuant thereto. However, this shall not be construed as prohibiting lawful disclosure or use of any information concerning additional admissions or explanations volunteered by the examinee during the examination where such admissions or explanations are not responsive to control questions.

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Chapter 5. Exchange of Information

001. The exchange of information relative to truth and deception examinations between public law enforcement agencies is permitted.

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Chapter 6. Additional Exchange of Information

001. The exchange of information relative to truth and deception examinations between examiners licensed under this act is permitted.

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Chapter 7. Preparation of written reports

- 001. An examiner shall, upon the written request of the examinee or the person requesting the examination, prepare a written report of the examination, which shall contain the following:
 - 001.01 A statement of arrangements for the examination including the name of the person requesting the examination, date, time, and location of the examination, type of instrumentation used to administer the examination, and a statement of purpose for the examination.
 - 001.02 The number and type of tests used during the examination.
 - 001.03 The examiner's opinion as to the truthfulness of deception of the examinee, or the examiner's statement that he or she was not able to reach a conclusion about the examinee's truthfulness or deception.

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Chapter 8. Maintenance of Records

- 001. An examiner shall, in the case of every truth and deception examination administered by him or her, create and maintain a record for not less than 1 year. Such record shall contain, at a minimum, all of the following:
 - 001.01 Information pertaining to the name of the Person (company or corporation) requesting the examination, date, time, and location of the examination, type of instrumentation used to administer the examination, and a statement of purpose for the examination.
 - 001.02 All written consents and acknowledgements of the examinee as required elsewhere in these rules.
 - 001.03 Information volunteered by the examinee during the pretest or post-test interview that is pertinent to the objectives of the examination.
 - 001.04 The exact wording of the questions asked during the administration of the test series and the examinee's exact answers to those test questions.
 - 001.05 All polygraph and voice stress recordings, including charts, made during the truth and deception examination test. Such recordings and charts shall adequately identify all of the following.
 - 005.01 The name of the examinee
 - 005.02 The name of the examiner
 - 005.03 The date, time and location of the test.
 - 005.04 The order in which the tests were administered.
 - 005.05 The identification of each test question.
 - 005.06 The examinee's answer to each test question.
 - 001.06 All pretest interview information volunteered by the examinee relating to the examinee's background, education, health, medical history, and his or her general suitability for the examination.

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Chapter 9. Rules of Conduct

- 001. A person conducting a truth and deception examination as prescribed by this act shall, in case of every truth and deception examination, do the following:

- 001.01. Conduct all examination in the physical presence of the examinee.

- 001.02 Personally obtain a written consent from the examinee prior to administering an examination, unless such examination is a requirement of law or judicial ruling. Then obtaining such a release is not required. The consent shall contain as a minimum, all of the following:

- 001.02a The name of the examinee

- 001.02b The name of the examiner, and license description.

- 001.02c The date, time and location of the examination.

- 001.02d An explanation of the nature and purpose of the examination which has been made by the examiner.

- 001.02e An explanation that the examination is voluntary and that the examinee may discontinue the examination at any time.

- 001.02f The type of instrumentation used to conduct the examinations.

- 001.02g The name of the person, company, corporation, firm or agency requesting the examination.

- 001.02h The name of the person, company, corporation, firm or agency to whom the written results of the examination are provided.

- 001.02i The signature of the examinee or witnessed mark of the examinee.

- 001.02j The signatures of witnesses, monitors, and interns participating in the examination.

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- 001.03 Develop an opinion concerning an examinee's truthfulness or deception based upon the examination conducted, or an opinion that the examiner could not reach a conclusion from the testing conducted.
- 001.04 The examiner shall insure the equipment used to conduct a truth and deception examination is maintained in working order, and prior to testing insure that it is in working order.
- 001.05 An examiner shall, prior to examination, insure the purpose of the examination is not to circumvent or defy the law.
- 001.06 No examiner shall conduct an examination of any examinee he believes, through observation, interview or other credible evidence, to be physically or psychologically unfit for such an examination at the time.

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Chapter 10. Application for License

- 001. A person applying for a truth and deception examiner's license under this act shall complete the application for licensing supplied by the Secretary and take a written examination provided by the Secretary.
 - 001.01 The Secretary will provide a time and place for an applicant to take the written examination. All examinations will be given by appointment with the Secretary.
 - 001.02 A fee of \$50.00 shall be paid on behalf of the applicant on the date of the examination prior to taking the licensing examination or re-examination.
 - 001.03 The written examination may consist of multiple choice, truth and false, other objective question types, and essay questions. A time limit of two (2) hours shall be observed during the administration of the examination.
 - 001.04 All applicants shall attain not less than 70 per cent correct answers on the written examination.
 - 001.05 All applicants shall be notified of the results of the examination by mail not later than 15 days after the examination. The scores of the written examination shall not be released, unless otherwise required to do so by law.
 - 001.06 The \$50 fee is not refundable if an applicant fails the written examination, unless otherwise provided by law.
 - 001.07 An applicant may re-take the written examination after a period of 30 days, but not more than 90 days, from the date of the first examination. The applicant shall pay a \$50 fee prior to the second written examination, the applicant must wait six (6) months from the date of the second examination before re-applying, and must re-file a second application form up-dating previous information supplied on the first application. A \$50 fee will be required prior to the written examination.

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- 001.08 The written examination shall cover the following topics:
 - 001.08a History
 - 001.08b Physiology
 - 001.08c Psychology
 - 001.08d Instrumentation
 - 001.08e Testing Procedures
 - 001.08f State Law
 - 001.08g Federal Law
- 001.09 Separate written examinations shall be given for the polygraph and voice stress applicants, with at least half of the questions on each examination worded identically.
- 001.10 The questions and answers for the written polygraph and voice stress examinations shall not be released, unless otherwise required to do so by law.
- 001.11 Information contained on a person's application for truth and deception examiner's license shall not be released, unless otherwise required to do so by law.
- 001.12 A licensed examiner, under this act, whose license has expired, or whose license has been revoked under provisions of this act, and under the rules promulgated from this act, shall be required to complete an application for a license, retaking the written examination for a license, and paying all fees required for re-licensing, unless otherwise required to do so by law.

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Chapter 11. Listing of Licenses

001. The Secretary shall prepare and publish a list of all persons holding valid licenses issued by the Secretary. This list shall include the name and address of the licensee, license number, expiration date, and the type of license issued. Such list shall be available at no charge upon request, and shall be published on the Secretary of State's internet homepage and updated on a regular basis.

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Chapter 12. Schools or Training Programs

001. Any school or training program requesting said school or program be accepted for approval of their graduates for licensing under this act, shall provide the Secretary with a formal request together with a course outline, the number of hours taught for each subject, the names and professional history of its owners, staff, and instructors, proof the school has met all requirements of the Department of Education for the State of Nebraska, and submit any additional information the Secretary may desire and request, so he may determine that the applicant is actually an acceptable training institution. The failure of any such school or training facility to provide the requested information shall result in non-approval of the applicant and no graduate of such school or training facility may be licensed by the Secretary.

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Chapter 13. Qualification of Interns

A person is qualified to receive a license as an intern if he or she meets the requirements of the act. Before being issued an intern's license, an applicant shall submit a completed license application, provided by the Secretary which shall include the name, address, qualifications, and letter of agreement identifying the intern's training supervisor.

001. An approved internship or internship training program shall consist of an academic training component and a practical training component, all of the following provisions apply:
 - (a) An applicant shall submit to the Secretary satisfactory evidence of enrollment in a course of instruction in the theory and practice of polygraph or voice stress technique.
 - (b) The course of instruction referred to in subdivision (a) of this sub-rule shall be conducted at a polygraph or voice stress school approved by the Secretary.
 - (c) The successful completion of the in-house phase of the school's training by an applicant shall be verified by a letter from the training facility.
 - (d) To qualify for an examination for a full license, a school shall issue a certificate that an applicant has met all requirements of the school.
002. During the course of his or her internship, and subsequent to his or her completion of academic training, an intern shall do all of the following:
 - (a) Personally administer not less than 50 polygraph or voice stress examinations, of which not less than 25 shall be specific issue examinations. The first 25 examinations conducted by the intern shall include not less than 5 specific issue examinations, and all 25 examinations shall be supervised on-site by a polygraph or voice stress examiner who holds a current and valid license issued under this act, to act as trainee supervisor. On-site

supervision means that a trainee supervisor is personally and immediately available for consultations with the intern and directly observes, either by audio or visual means, or both, the actual conduct of the intern in administering the examination.

- (b) Following the completion of the administration of the first 25 examinations set forth in sub-division (a) of this sub-rule, the intern shall personally administer not less than 25 additional examinations under the supervision of an approved trainee supervisor. The supervision of these additional examinations may, at the discretion of the trainee supervisor, be either direct, on-site supervision or remote supervision.
 - (c) The trainee supervisor need not be personally present at the time of the examination, but after the examination the trainee shall provide the trainee supervisor with all relevant data in order that the supervisor may evaluate and critique the intern's performance.
003. All interns shall maintain a chronological record of all examinations conducted. Such record shall contain as minimum, all of the following information.
- (a) The name of the examinee.
 - (b) The name of the trainee supervisor.
 - (c) The date, time and location of the examinations.
 - (d) The nature of the examination and whether on-site or remote supervision.
 - (e) The number of tests administered during the examination and the intern's opinion on each test.
004. From the chronological record, the Secretary may randomly select not less than 10 separate examinations, all records, and supportive data which the intern shall make available to the Secretary for inspection during the intern's licensing examination. The intern shall verify that the records called for by the Secretary are complete and are the records pertaining to examinations which the Secretary has requested.

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Chapter 14. Internship Trainee Supervisors

- 001. Internship trainee supervisor status shall be granted for a 24-calendar-month term to an applicant who meets the following minimal requirements and who has applied for this status with the Secretary:
 - 001.01 Holds or, in the case of a non-resident, is qualified to hold a current public or private polygraph or voice stress examiner's license in the State of Nebraska.
 - 001.02 Has satisfactorily completed a formal course of instruction in polygraph or voice stress technique approved by the Secretary.
 - 001.03 Has had not less than four (4) continuous years of experience in administering polygraph or voice stress examinations before application for intern trainee supervisor status, during which period he or she personally conducted a minimum of 200 such examinations, not less than 100 of which were specific issue examinations.
 - 001.04 Has an academic degree at the baccalaureate level from an accredited college or university, or has at least four (4) years of investigative experience at the federal, state, political subdivision, or private licensed investigator level immediately prior to application, or has had at least four (4) years of experience administering polygraph or voice stress examinations.
 - 001.05 Provides satisfactory evidence that he or she has done one or more of the following in a 24-calendar-month period immediately before his or her application.
 - 001.05a Attended one or more seminars or workshops relating directly with the polygraph or voice stress technique where such workshops or seminars total not less than 24 hours of attendance. Such workshops or seminars shall involve topics related to polygraph or voice stress testing. Satisfactory evidence of attendance and substantive areas covered in such workshops shall be submitted to the Secretary.

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- 001.05b Completed not less than 15 semester hours of academic course work at an accredited college or university.
- 001.05c Completed not less than 10 semester hours of academic course work at an accredited college or university, and attended one or more seminars or workshops approved by the Secretary relating directly with the polygraph or voice stress technique, where such workshops or seminars total not less than 16 hours of attendance.

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Chapter 15. Reports to Secretary of State by Supervisor

001. An intern supervisor shall submit to the Secretary, a written statement (immediate notice) of information during the intern supervisor's term of supervision of an intern of the following:
 - 001.01 Any action or inaction by the intern in violation of the act or rules promulgated pursuant thereto.
 - 001.02 Any judgement of the intern supervisor that the internship should be terminated and the reasons therefore.
002. An intern supervisor shall submit a report of Internship to the Secretary of State's Office upon completion of the first 25 and 50 examinations by the intern being supervised. Such report shall include, but not be limited to:
 - 002.01 The name of the intern and name of the supervisor.
 - 002.02 The time period covered by the report.
 - 002.03 Subject matter of the examinations, i.e. pre-employment, sexual assault, etc.
 - 002.04 An evaluation and rating of the intern's performance on examinations given during the report period.
003. An intern supervisor shall appear before the Secretary of State, provide a verbal report of the interns progress and answer questions pertaining to the internship for the Secretary of State and the Truth and Deception Examiner's Advisory Board prior to the licensing of the intern as an examiner.

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Chapter 16. Renewal of Licenses

001. Prior to December 31 of each year, the Secretary shall notify each public and private licensed examiner that they must renew their license. The Secretary shall provide each licensed examiner with a short form renewal application, which licensee will complete and return to the Secretary with a \$25 renewal fee prior to December 31st of each year. The renewal application form will be an affidavit and will contain the necessary information required by the Secretary for license renewal.

Public and private licenses shall be considered expired and the licensee's file closed 90 days from the date of required renewal. A person whose license has been designated expired shall reapply for licensing and meet all requirements of the act and rules promulgated from this act.

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Chapter 17. Advisory Board

001. The Secretary may at his discretion seek the advice and counsel of persons holding valid public and private truth and deception licenses on such matters as the Secretary deems necessary. Further, the Secretary may at his discretion create an advisory board of persons holding valid truth and deception licenses of which this board will be made up. The board will be made up of four persons holding polygraph examiner's licenses and four persons holding voice stress examiner's licenses. This board shall serve in a non-paid capacity and at the pleasure of the Secretary of State. The purpose of the board is to advise the Secretary on points concerning the licensing act. This may include but not be limited to:

001.01. Internship requirements

001.02. Development of the written examination.

001.03. Development of rules and regulations

001.04. Reviewing applications for intern licenses, examiner licenses, training facilities, and intern trainee supervisor applications.

001.05. To review procedures under which examinations are administered.

001.06. To assist during the investigation of complaints against examiners.

001.07. To conduct on-site inspections of intern examiner's facilities, examiner's facilities for license renewal, and to inspect equipment used for testing to verify the equipment's condition.

001.08. To assist during the administration of the written examinations for licensing.

001.09. To provide technical advice to the Secretary in areas of interest to the administration of the licensing act.

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Chapter 18. Misrepresentation.

001. A person holding a valid license issued under this act shall not make any willful misrepresentation or false promises or cause to be printed any false or promises or cause to be printed any false or misleading advertisements for the purpose of directly or indirectly obtaining business or interns.

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Chapter 19. Professional Conduct and Standards

001. All persons who are licensed will conduct themselves at all times as professionals, placed in a unique position of private and public trust, respecting and protecting both the dignity and civil rights of those with whom they have professional dealings; maintaining the highest standards of qualification, taking on no task for which they are not thoroughly prepared; devoting themselves to truth.